

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte WILLIAM PRESLEY MULLINS

Appeal No. 2002-2107
Application No. 09/160,085

ON BRIEF¹

Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 13 and 27. Claims 14 to 26, the other claims pending in this application, have been allowed.

We AFFIRM-IN-PART.

¹ On January 15, 2003, the appellant filed a waiver of request for oral hearing (Paper No. 24).

BACKGROUND

The appellant's invention relates to a portable supply rack for spool-dispensed materials useable in a variety of applications (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Williams	1,049,021	Dec. 31, 1912
McDougall	2,074,411	Mar. 23, 1937
Marshall, Jr.	4,074,872	Feb. 21, 1978
Carter	Des. 293,182	Dec. 15, 1987
Domingo	4,834,331	May 30, 1989
Peterson	4,869,344	Sep. 26, 1989

Claims 1 to 6, 12, 13 and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Williams in view of Domingo and Peterson.

Claims 7 and 9 to 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Williams in view of Domingo and Peterson as applied to claim 1 above, and further in view of McDougall or Carter.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Williams in view of Domingo and Peterson as applied to claim 1 above, and further in view of Marshall.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 21, mailed January 15, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 19, filed September 28, 2001) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one

of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

Claim 1

We sustain the rejection of claim 1 under 35 U.S.C. § 103.

Claim 1 reads as follows:

A freely hanging and independently portable supply rack comprising:

a primary support wall having a front face, a rear face, an upper edge, a lower edge, and opposing parallel side edges;

a pair of parallel side walls, each side wall extending from a respective parallel edge of said primary support wall, each side wall further terminating in an outer edge and having a plurality of apertures formed through the side wall adjacent the outer edge, whereby apertures in one side wall are aligned with corresponding apertures in a remaining side wall;

at least one support rod having opposite ends, each of the opposite ends being insertable through corresponding aligned apertures in said pair of parallel side walls, said at least one support rod including holes formed therethrough adjacent opposite ends thereof; and

a hanger portion of equal width to and coextensively formed with the upper edge of said primary support wall, said hanger portion solely supporting a weight of said supply rack.

Williams discloses a device for holding articles used in sewing which may be attached to a dress or suspended from a cord or ribbon. As shown in Figure 1, the device includes a frame A having a back wall 10 with two diverging brackets 11 (see Figure 6) or two convergent brackets 11 (see Figure 7). The brackets 11 are provided with slots 13 supporting a shaft 14 on which a spool B of thread is carried and turns. Williams refers to his previous patent (U.S. Patent No. 1,024,958) on a similar device on page 1, lines 17-19, and page 2, lines 13-14.

Domingo's invention concerns a holding device for holding and fitting of hanging elements (mobiles) to the height of the ceilings for publicity sales locations. As shown in the sole figure, the device includes a plate 1 designed to be mounted to a ceiling by a pressure-applicable adhesive layer 2; two wings 3 perpendicular and parallel to each

other, though with a significant resilient tendency (indicated by the arrows) to approach each other; a hole 4 formed on each of the wings 3; stems 5 of a shaft 6 mounted in the holes 4; and a winding thread 7 from which hangs a mobile (not shown).

Peterson's invention relates to wire storage devices, and more particularly to wire storage devices for holding multiple rolls of wire. As shown in Figures 1-8. the wire storage device is mounted to a ladder and includes a pair of side plates 42, 44; a plurality of shafts 46 spanning between and detachably engaged to the side plates 42, 44 with the ends of the shafts 46 received by apertures 50 in the side plates 42, 44; cotter pins 52, 54 are used to fix opposite ends of the shafts 46 against passage through the side plate 42, 44; and spools 60 of electrical wire 56 are rotatably mounted about the shafts 46.

The examiner concluded that it would have been obvious to one of ordinary skill in the art to provide Williams with (1) parallel side walls² having an aperture as taught by Domingo and (2) a plurality of holes and rods (i.e., apertures and shafts) as taught by Peterson.

² Williams' earlier patent (U.S. Patent No. 1,024,958) discloses parallel side walls.

Implicit in this rejection is the examiner's view that the above noted modifications of Williams would result in an apparatus which corresponds to the apparatus recited in claim 1 in all respects.

The appellant argues that the combination of Williams, Domingo and Peterson would on its face lead a person of ordinary skill in the art to the picture depicted on page 7 of the brief. The appellant then contends that only by distortion and/or hindsight would a person of ordinary skill in the art consider the entire upper portion of Williams' back plate 10 to be a hanger portion as claimed. We do not agree.

In our view, the claimed hanger portion (i.e., a hanger portion of equal width to and coextensively formed with the upper edge of said primary support wall, said hanger portion solely supporting a weight of said supply rack) is readable on³ both the picture depicted on page 7 of the brief and the back wall 10 of Williams. In that regard, the upper portion of the back wall 10 of Williams (i.e., that portion of the back wall 10 above the brackets 11) clearly has a width equal to and coextensively formed with the upper edge of the lower portion of the back wall 10 (i.e., that portion of the back wall 10 between the brackets 11). Thus, the claimed primary support wall is readable on the

³ It is only necessary that a claimed limitation "read on" something disclosed in the reference to be met by it. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

lower portion of the back wall 10 (i.e., that portion of the back wall 10 between the brackets 11) and the claimed hanger portion is readable on the upper portion of the back wall 10 of Williams (i.e., that portion of the back wall 10 above the brackets 11) since it is that portion of the back wall which includes openings 18, 19 in Williams' prior patent (U.S. Patent No. 1,024,958) and as providing means by which the device may be suspended from a nail or hook, or for attachment of a ribbon, cord, chain or the like from which the device may depend.

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is affirmed.

Claims 3, 5, 6, 12 13 and 27

The appellants have grouped claims 1, 3, 5, 6, 12 13 and 27 as standing or falling together.⁴ Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 3, 5, 6, 12 13 and 27 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 3, 5, 6, 12 13 and 27 under 35 U.S.C. § 103 is also affirmed.

Claim 2

We sustain the rejection of claim 2 under 35 U.S.C. § 103.

⁴ See page 5 of the appellant's brief as amended by the amendment to the brief filed on November 27, 2001 (Paper No. 20).

Dependent claim 2 adds to parent claim 1 the further limitation that the side walls extend from the upper edge to the lower edge of the primary support wall. This limitation is clearly met by Williams. In that regard, as shown in Figure 1 of Williams, brackets 11 extend from the upper edge to the lower edge of the lower portion of the back wall 10 between the brackets 11 (i.e., the primary support wall).

For the reasons set forth above, the decision of the examiner to reject claim 2 under 35 U.S.C. § 103 is affirmed.

Claim 4

We sustain the rejection of claim 4 under 35 U.S.C. § 103.

Dependent claim 4 adds to parent claim 1 the further limitation that the side walls are set in from opposing vertical side edges of the primary support wall. This limitation is clearly met by Williams. In that regard, as shown in Figures 1 and 6 of Williams, brackets 11 are set in from opposing vertical side edges of the lower portion of the back wall 10 between the brackets 11 (i.e., the primary support wall) to create the slots for the means 28 for holding the pins.⁵

⁵ Williams' earlier patent (U.S. Patent No. 1,024,958) more clearly set forth the details of this means.

For the reasons set forth above, the decision of the examiner to reject claim 4 under 35 U.S.C. § 103 is affirmed.

Claims 9 to 11

We sustain the rejection of claims 9 to 11 under 35 U.S.C. § 103.

Dependent claims 9 to 11 add to parent claim 1 the further limitations that the hanger portion is (1) coextensive with a width of the primary support wall; (2) integrally formed with the primary support wall; and (3) formed as a one-piece construction with the primary support wall. These limitations are clearly met by Williams for the reasons set forth previously in our treatment of claims 1 and 2.

Accordingly, the decision of the examiner to reject claims 9 to 11 under 35 U.S.C. § 103 is affirmed.

Claims 7 and 8

We will not sustain the rejection of claims 7 and 8 under 35 U.S.C. § 103.

Dependent claim 7 adds to parent claim 1 the further limitation that the hanger portion is an arcuately formed extension of the primary support wall, curving toward the

rear surface of the primary support wall. Dependent claim 8 adds to parent claim 1 the further limitation that the hanger portion is an angularly formed extension of the primary support wall, and includes right angles so as to terminate toward the rear surface of the primary support wall.

Clearly, the limitations of claims 7 and 8 are not taught by Williams. While both McDougall and Carter teach the use of curved hanger portion and Marshall teaches the use of an angularly formed hanger portion, we see no suggestion for modifying Williams in the manner proposed by the examiner to meet the above-noted limitations of claims 7 and 8 except for the hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 7 and 8 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 6, 9 to 13 and 27 under 35 U.S.C. § 103 is affirmed and the decision of the examiner to reject claims 7 and 8 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

CHARLES E. FRANKFORT
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

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